

REMARKS

Claims 7, 15 and 19-22 are pending in this application. By this Amendment, claims 7, 15 and 19-22 are amended for clarity and to ensure antecedent bases for claim terms. No new matter is added. Reconsideration of the application in view of the above amendments and the below remarks is respectfully requested.

The courtesies extended to Applicants' representative by Examiner Rahim and Supervisory Patent Examiner Zand during the telephone interview held March 8, 2010 are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.

I. Statement of Substance of Interview

During the telephone interview, the Examiners agreed to withdraw the rejection of claim 22 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2006/0101511 to Faillenot et al. ("Faillenot"). This rejection was improper because Faillenot does not qualify as prior art under §102(e) or otherwise.

The Interview Summary corresponding to the March 8 interview asserts that "[b]oth parties came to an agreement that [the] used prior art is invalid. Examiner overlooked the 371 date and used [the] PCT publication date" (omitted words added for clarity).

However, while Applicants agree that the prior art rejection is invalid, Applicants disagree that the Examiner overlooked the 371 date and used the PCT publication date. Rather, the withdrawn Final Rejection and Advisory Action applied the PCT filing date.

The present application is a National Stage of PCT/JP2005/002104 filed February 4, 2005, which in turn claims priority to Japanese Patent Application No. JP2004-029928 ("JP928") filed on February 5, 2004. An accurate English-language translation of JP928 was submitted with the January 13, 2010 Request For Reconsideration

and was entered by the February 9, 2010 Advisory Action. The translation perfected the priority date of this application to February 5, 2004 (the filing date of the priority application).

On the other hand, Faillenot was published on May 11, 2006, after Applicant's PCT filing date. Faillenot's corresponding international application PCT WO 2004/068817 was published on August 12, 2004, after the February 5, 2004 priority date of the present application. Moreover, the PCT filing date of Faillenot is not a 35 U.S.C. § 102(e) date because the PCT publication of Faillenot was published in French, not in English as required to establish a §102(e) date. (*See, e.g.*, Example 5 of MPEP §706.02(f)(1)(II) and MPEP §2136.03(B).) Hence, Faillenot does not have a reference date that is earlier than Applicant's February 5, 2004 priority date.

II. Request for Reconsideration of Rejection of All Claims—The Combination of Grecsek and Matsubara Is Clearly Missing Several Recited Features of Applicants' Claims

During the telephone interview, Examiner Rahim indicated that claim 22 may be rejected in a similar way in which claim 15 was rejected. However, Applicants believe the rejection of claim 15 and all other claims is improper. Thus, a similar rejection of claim 22 will also be improper.

In particular, the withdrawn Final Rejection and Advisory Action reject claims 7, 15 and 19-21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,088,801 to Grecsek ("Grecsek") in view of U.S. Patent No. 7,123,914 to Matsubara et al. ("Matsubara"). This rejection is respectfully traversed because the withdrawn Final Rejection and Advisory Action have failed to establish, and cannot establish, that the combination of Grecsek and Matsubara discloses or would have rendered obvious all of the features of independent claims 7 and 15.

Flowcharts 1 and 2 were attached to the January 12, 2010 Request for Reconsideration ("Request") to facilitate understanding of the remarks below. Flowchart 1 was derived from

claim 7 and illustrates an overview of some of the functionality of both claims 7 and 15.

Flowchart 1 is merely intended to be an overview to contrast the differences discussed below and does not constitute a simplification of, disclaimer of or prejudice to the subject matter of claims 7 and 15. Flowchart 2 was adapted from Fig. 3 of Grecsek to further describe the functionality disclosed in Grecsek.

A. Grecsek Fails To Disclose Receiving Function Information "Before Receiving the Program"

Claim 7 recites, among other features, "a receiving unit; a first receipt control unit that receives, using the receiving unit, before receiving the program via the network, function information indicating the function used in the program; a determining unit that determines whether to receive the program, by comparing the function information received by the first receipt control unit and information stored by the storing unit; and a second receipt control unit that receives, using the receiving unit, the program via the network if the determining unit determines to receive the program, and that cancels receipt of the program via the network if the determining unit determines not to receive the program."

Claim 15 recites, among other features, "a first step of receiving, before receiving a program via a network, function information indicating a function used in the program; a second step of determining, by comparing the function information received in the first step and information on whether the function of the program is permitted to be used, which is pre-registered in memory, whether to receive the program associated with the function information; a third step of receiving the program via the network if it is determined in the second step to receive the program; ... and a fifth step of canceling reception of the program via the network if it is determined in the second step not to receive the program." (Emphasis added.)

The withdrawn Final Rejection and the Advisory Action assert that Grecsek discloses the above-quoted features. As shown in Flowchart 2, Grecsek discloses a computer 100 that, before executing software process 110, evaluates the process to create a capabilities list describing capabilities found in the process 110 (step S21). Subsequently, the computer 100 reads a policy 200 and stores a capabilities list 210 that specifies various functions and an authorizations list 220 that specifies whether each of the capabilities described in the capabilities list 210 is acceptable (step S22). Subsequently, the computer 100 compares the capabilities list 210 created at step S21 and the policy 200 read at step S22 to determine whether each capability found in the process 110 violates the policy 200 (step S23). If all of the capabilities found in the process 110 do not violate the policy 200 (step S23: NO), the computer 100 permits execution of the process, and grants access to resources 130 (step S24). On the other hand, if any of the capabilities found in process 110 violates the policy 200 (step S23: YES), the computer 100 denies access to resources 130 accompanying execution of the process (step S25).

In contrast, claims 7 and 15 recite a different functionality. As depicted in Flowchart 1, a receiving device, initially, before receiving a program, receives function information indicating a function used in the program (step S11). Subsequently, the receiving device compares the function information received at step S11 and information stored in a storing unit (or pre-registered in memory) (step S12) to determine whether a function of a program provided via a network is permitted to be used, and hence whether to receive the program (step S13). The receiving device, if determining to receive the program (step S13: YES), receives the program via a network (step S14). In this case, the receiving device executes the program, for example, in response to an instruction from a user (step S15). On the other hand, if determining not to receive the program (step S13: NO), the receiving device cancels receipt of the program (step S16).

According to the above-recited features of claims 7 and 15, the receiving device receives function information indicating a function used in a program before receiving the program, and if determining that the program contains a function not permitted to be used, on the basis of the function information, does not receive the program. Thus, a result is achieved that a program containing a function not permitted to be used, e.g., a harmful program, is prevented from entering the receiving device.

In the Responses to Arguments section on page 2 of the withdrawn Final Rejection, the withdrawn Final Rejection asserts that Grecsek discloses this feature at col. 4, lines 14-19. The withdrawn Advisory Action contends that "before receiving a program via a network" is taught by Grecsek in the Abstract. Neither of these contentions is correct.

The cited portions of Grecsek do not disclose a configuration for determining whether to receive a program, or a configuration for receiving function information indicating a function used in the program, before receiving the program, to determine whether to receive the program. The cited portion of Grecsek at col. 4, lines 14-19, merely discloses to grant or deny access to (and execution of) a process, already resident on the computer, depending upon whether the process violates a policy 200. Moreover, Grecsek's Abstract is silent about receiving a program through a network. In fact, the only discussion of a network in Grecsek is a generic discussion in the background section about how the growth of data networks like the internet creates more hazards when malicious executable software is run. Therefore, the withdrawn Final Rejection and the Advisory Action fail to establish that Grecsek discloses or would have rendered obvious this feature. In other words, Grecsek fails to disclose at least the "first receipt control unit," the "determining unit" and the "second receipt control unit," as recited in claim 7. Likewise, Grecsek fails to disclose at least the first, second, third and fifth steps, as recited in claim 15.

In Grecsek, evaluation of process 110 is made to create a capabilities list. A comparison of the capabilities list and predetermined policy 200 is made to determine whether the process

violates policy 200. Accordingly, in Grecsek, unless process 110 is introduced into computer 100, evaluation of the process cannot be made. In other words, in Grecsek, it is necessary to introduce process 110 into computer 100 to evaluate whether the process violates policy 200, even if the process is a process that violates policy 200. In contrast, as recited in claims 7 and 15, function information (indicating a function used in a program) is received before receiving the program. If it is determined that the program contains a function not permitted to be used, e.g., a harmful program, the program is prevented from entering into the receiving device of claim 7, and prevented from being received in claim 15, so that higher security is achieved than can be achieved with the computer 100 of Grecsek.

Therefore, in Grecsek, it is necessary to receive and install process 110 (without necessarily executing it), even if the process violates policy 200. In contrast, in claims 7 and 15, a program is not received or installed if the program is problematic, and memory resources to be used by a problematic program are prevented from being used. Also, by avoiding receipt of a problematic program, unnecessary communications charges or bandwidth usage can be avoided. *See, e.g.*, page 23, lines 24-27 of Applicants' specification. Claims 7 and 15 achieve at least these unexpected results as compared with computer 100 of Grecsek.

B. Matsubara Does Not Cure The Above Deficiencies of Grecsek

Matsubara fails to cure at least the above-discussed deficiencies of Grecsek. In fact, the withdrawn Final Rejection does not assert that Matsubara cures these deficiencies. The withdrawn Final Rejection merely asserts that Matsubara discloses networking with a relay device when discussing another feature recited in claims 7 and 15 that is admittedly missing in Grecsek.

It is clear, and the withdrawn Final Rejection does not dispute, that Matsubara does not disclose receiving function information of a program before receiving the program. Thus, Matsubara would not have rendered obvious "receiving, before receiving a program via a

network, function information indicating a function used in the program," as recited in claims 7 and 15.

C. Summary

For at least the above reasons, Grecsek cannot reasonably be considered to teach, or to have rendered obvious, the combinations of features positively recited in independent claims 7 and 15 (and claim 22). Further, as shown above, Matsubara is not applied in any manner that would overcome the above-identified shortfalls in the application of Grecsek to the subject matter of independent claims 7 and 15 (and claim 22). To any extent that Grecsek is even combinable with Matsubara, a conclusion which Applicants do not concede, no permissible combination of these references can reasonably be considered to have rendered obvious the combination of all of the features positively recited in claims 19-21, for at least the respective dependence of these claims directly on an allowable base claim, as well as the separately allowable subject matter that these claims recite.

Accordingly, reconsideration and withdrawal of the rejections of claims 7, 15 and 19-21 under 35 U.S.C. §103(a) over the applied references, and allowance of those claims along with claim 22, are respectfully requested.

D. Claim 22 Recites Features Similar to Those of Claim 15

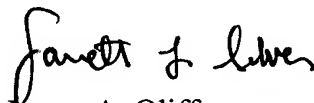
Claim 22 recites features similar to at least some of the features discussed above with respect to claim 15. Therefore, claim 22 is patentable for at least reasons similar to those above.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 7, 15 and 19-22 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Date: March 11, 2010

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